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No. 82-486

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

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UNITED BROTHERHOOD OF CARPENTERS and JOINERS OF AMERICA, LOCAL 610 (AFL-CIO), *et al.*,
*Petitioners,*

v.

PAUL E. SCOTT, *et al.*,
*Respondents.*

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**On Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit**

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## JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED 9/20/1982
PETITION FOR A WRIT OF CERTIORARI GRANTED 11/29/1982

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## LIST OF RELEVANT DOCKET ENTRIES

Original Complaint filed: 1/3/1975

Hearing on Application for a Restraining Order: 1/31/75

Restraining Order Issued: 1/31/1975

Application for a Restraining Order Granted: 1/31/1975

Preliminary Injunction Issued: 2/27/1975

Order Granting Plaintiffs Motion To File An Amended Complaint Granted: 12/13/1976

Defendants Motions to Dismiss filed: 1/11/1977 to 2/14/1977

Trial: 4/27/1977 to 4/29/1977

Memorandum Opinion of the District Court issued: 11/17/1978

Final Judgment issued: 12/19/1978

Notice of Appeal filed: 7/12/79

Court of Appeals Panel Opinion issued: 3/26/1981

Order Granting Rehearing En Banc issued: 8/31/1981

Court of Appeals En Banc Opinion and Judgment issued: 7/1/1982

Petition for a Writ of Certiorari filed: 9/20/1982

Petition for a Writ of Certiorari granted: 11/29/1982

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Civil Action No. B-75-26-CA

PAUL E. SCOTT, *et al.*,
*Plaintiffs*

v.

BILL MOORE, *et al.*,
*Defendants*

[Filed Dec. 13, 1976]

## AMENDED COMPLAINT

COME NOW Paul E. Scott, James T. Matthews and A. A. Cross Construction Company, Inc., plaintiffs, and with leave of Court make and file this first amended complaint and would respectfully show to the Court:

### I.

### PARTIES

1. Plaintiff, Paul E. Scott, is a citizen of the United States, now living in Port Arthur, Texas.

2. Plaintiff, James T. Matthews, is a citizen of the United States, now living in Port Arthur, Texas.

3. Plaintiff, A. A. Cross Construction Company, Inc. is a Texas corporation, actually engaged in work within the Eastern District of Texas.

4. Defendants, Bill Moore, Robert Wayne Faulk, Bruce Hill, Curtis Beasley, Jay Desormeaux, Fish Ferguson, John Wallace, Jr., Asbestos Workers Local #22, Asbestos Workers Local #112, Boilermakers Local #587, Bricklayer's Local #13, Carpenters Local #610, Carpenters Local #753, Carpenters Local #2007, Cement Masons

Local #804, Cement Masons Local #884, Lather Workers Local #416, Millwrights Local #2484, Operating Engineers Local #450, Painters Local #243, Painters Local #328, Piledrivers Local #1347, Pipefitters Local #195, Plumbers Local #504, Electricians Local #479, Ironworkers Local #125, Laborers Local #852, Roofers Local #116, Sheetmetal Workers Local #198, Teamsters Local #920, Labor's Local #870 and Sabine Area Building Trades Council.

## II.

## JURISDICTION AND VENUE

This is a suit by plaintiffs individually and as a class representatives for injunction and damages.

## III.

## CLASS ACTION

Plaintiffs bring this action on their own behalf and as representatives of a class as defined in Rule 23, Federal Rules of Civil Procedure. This class may be defined as being composed of four categories or sub-classes of plaintiffs consisting of:

(a) All persons presently employed by A. A. Cross Construction Company, Inc. (hereinafter called "Cross"), their wives and children;

(b) All persons, together with their wives and children, who may become employed by Cross and perform work leading to construction of the Alligator Bayou Pump Station on the hurricane protection levee along Taylor's Bayou near Port Arthur, Jefferson County, Texas.

(c) All persons, their wives and children, and all firms and corporations who may supply, deliver, or provide labor, materials, goods or services to Cross or others for construction of the Alligator Bayou Pump Station;

(d) All persons, their wives and children, who may lawfully be present upon the site of the Alligator Bayou Pump Station, or the ways leading thereto.

## IV.

## BACKGROUND OF CONTROVERSY

A. Plaintiffs are employees of A. A. Cross Construction Company, Inc., and have been for more than five months. Cross has a contract with the U.S. Army Corps of Engineers to build a pump station known as the Alligator Bayou Pump Station on the hurricane protection levee along Taylor's Bayou at Alligator Bayou, near Port Arthur, in Jefferson County, Texas. This pump station (costing more than $8,000,000.00) is a part of the hurricane protection system designed and under construction to protect the lives and property of the residents of Port Arthur and south Jefferson County, Texas.

B. The normal vehicular entrance to the Alligator Bayou Pump Station is not along a public road. Rather, entrance is gained only be permissive use of a levee road or haul road under the control of either the U.S. Army Corps of Engineers, Jefferson County Drainage District No. 7, or McGinnes Brothers Construction Company (the firm constructing the levee). The levee road is accessible from Texas Highway 73 in Port Arthur, Texas.

C. Several days before January 17, 1975, plaintiffs had been told by defendant Moore and others, that unless their employer, Cross, entered into a contract with local labor unions governing the terms and conditions of work to be performed on the Alligator Bayou Pump Station, that "there will be trouble", that "you cannot do this job non-union", that "we will get you", and "your wives and children", and "we're going to run you out of this country one way or the other".

At the time of these threats, and similar threats by others, there was no labor dispute involving Cross, its

employees, or the construction project. There was not a picket line, there were no negotiations, representations elections or any other related activity.

Plaintiffs and those they represent were working on a daily basis at the pump station site. They were earning wages at a rate certified by the U.S. Secretary of Labor as the "prevailing wage rate" in the area for the crafts involved. Each day, weather permitting, the class of plaintiffs traveled from their homes to the job site, performing their duties.

D. On January 16, 1975, plaintiffs heard rumors that the next morning certain of the local trades unions or labor council were going to meet near the entrance to the job site on Highway 73 and picket the entrance to the levee road. Almost all of the Cross employees on the job site were so advised of these rumors.

On January 17, 1975, plaintiffs, who are Cross employees, went to work about 6:00 a.m., one hour earlier than normal. When they arrived at the Highway 73 entrance, there was no picket line. There were no people congregated. However, there were several cars and people coming together along Highway 73 at a road east of the levee road leading to the pump station. The Cross employees went to their work site unhindered and unmolested.

E. Between 6:00 and 7:00 A.M., January 17, 1975, a crowd of men—approximately 300 strong—amassed on Highway 73 at and near the entrance to the levee road leading to Cross' job site. Still, no picket signs or other indicia of any lawful dispute were evidenced.

Shortly after 7:00 A.M., January 17, 1975, plaintiffs and their fellow employees were at work when they were attacked by several truck loads of men who emerged from the crowd amassed at Highway 73.

These attackers came driving up the levee road. When they got to the Cross site, they jumped off the pickup trucks and started hollering and shouting all manner of obscenities and epithets at the plaintiffs, and ordered plaintiffs, gestapo style, to leave the job site.

Plaintiffs and their fellow workers complied instantly. They were out-numbered more than three-to-one by the attackers. They offered no resistance whatsoever. However, before they could leave the job site, plaintiffs and their fellow employees were assaulted and beaten with clubs, two-by-fours and iron bars. Their tools and equipment were smashed. Their trucks and cars were beaten—virtually all glass being broken out—their property was destroyed as they were forcefully driven from their work.

Finally, after their tools were bent and broken, their office trailer was turned over and burned, destroying even the payroll records of plaintiffs' service to their employer.

Nine of plaintiffs were physically injured. Six men required immediate medical treatment. At least one man is still suffering debilitating effects of a severe head injury.

F. Plaintiffs have been advised by responsible law enforcement officers that they can expect additional attacks and acts of violence upon themselves and members of their families, either at the job site, their homes or the public streets and highways leading thereto; all arising out of plaintiffs engaging in a totally lawful performance of their work on the construction of a public facility.

## V.

## DEFENDANTS

Defendants, and others acting in concert with them, combined, conspired and participated in the acts complained of herein.

## VI.

## LEGAL CAUSE OF ACTION

Plaintiffs, and those they represent, are members of an identifiable class of persons described in this complaint. Defendants, and others acting in concert, combination and conspiracy with them have conspired and effectuated the object of their conspiracy by threats, assaults, and burnings to deprive plaintiffs of the basic rights that the law secures to all free men.

Defendants, actuated by a class-based invidiously discriminatory animus, have denied and seek to continue to deny plaintiffs' equal protection of the laws of Texas and the United States, including the right to work, the right to speech, the right to association, assembly, security of person, interstate travel, and the right not to be deprived of life, liberty or property without due process of law.

## VII.

## INJUNCTION

Plaintiffs have no adequate remedy at law against the common design and conspiracy of defendants and others. Plaintiffs have attempted to locate and contact defendants—unsuccessfully. Unless the Court grants a temporary restraining order, the acts of these marauders will continue unabated, and the lives and property of plaintiffs will be expropriated outside the law.

## VIII.

## DAMAGES

Plaintiffs would further show that on account of the acts, wrongs, omissions and conduct described above plaintiffs, and particularly A. A. Cross Construction Co., Inc., experienced damages in excess of One Hundred Thousand ($100,000.00) Dollars, for which it hear and now prays.

WHEREFORE, PREMISES CONSIDERED, plaintiffs pray:

(1) That defendants, and all persons acting in concert with them, or to whom knowledge thereof is conveyed, be enjoined and restrained from conspiring, threatening or attempting to threaten, assault, damage or hinder the free movement of any persons, or the family, property or possessions of any person who may now or hereafter work upon, travel to, supply labor or materials to or for instruction of the Alligator Bayou Pump Station near Port Arthur, Texas;

(2) That the defendants be cited to appear herein;

(3) That the Court immediately grant a temporary restraining order, and set a time and place whereupon a hearing for preliminary injunction can be held;

(4) That the Court grant a preliminary injunction as aforesaid;

(5) Upon a final trial and hearing hereof that the Court grant a permanent injunction in the premises;

(6) That such other and further orders and writs as are necessary to insure the safety, lives and equal protection of plaintiffs issue to enforce the judgment and process of this Honorable Court;

(7) That plaintiffs have their costs of Court and such other relief as is just and proper in the premises.

(8) That plaintiffs recover their damages.

Respectfully submitted,

MEHAFFY, WEBER, KEITH
& GONSOULIN
Attorneys for Plaintiffs

By /s/ Roy V. G. Keith
Of Counsel

1400 San Jacinto Building
Beaumont, Texas 77701

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Civil Action No. B-75-26-CA

PAUL E. SCOTT *et al.*

vs.

BILL MOORE *et al.*

**ORIGINAL ANSWER OF DEFENDANTS, CARPENTERS LOCAL #610—JOHN WALLACE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW CARPENTERS LOCAL #610—JOHN WALLACE, defendants in the above entitled and numbered cause, and in answer to the plaintiff's complaint heretofore filed, would respectfully show unto the Court the following:

I.

PARTIES

(1) These defendants neither admit or deny subsection (1) of Paragraph I of plaintiff's complaint for lack of knowledge.

(2) These defendants neither admit or deny subsection (2) of Paragraph I of plaintiff's complaint for lack of knowledge.

(3) These defendants admit subsection (3) of Paragraph I of plaintiff's complaint.

II.

JURISDICTION AND VENUE

These defendants deny subsection (1) of Paragraph II of plaintiff's complaint in its entirety.

## III.

## CLASS ACTION

These defendants deny Paragraph III of plaintiff's complaint that it is properly brought as a class action.

## IV.

## BACKGROUND OF CONTROVERSY

(A) These defendants neither admit or deny subsection (A) of Paragraph IV of plaintiff's complaint for lack of knowledge.

(B) These defendants neither admit or deny subsection (B) of Paragraph IV of plaintiff's complaint for lack of knowledge.

(C) These defendants deny subsection (C) of Paragraph IV of plaintiff's complaint.

(D) These defendants deny subsection (D) of Paragraph IV of plaintiff's complaint.

(E) These defendants deny subsection (E) of Paragraph IV of plaintiff's complaint.

(F) These defendants deny subsection (F) of Paragraph IV of plaintiff's complaint.

## V.

## DEFENDANTS

These defendants deny Paragraph V of plaintiff's complaint in its entirety.

## VI.

## LEGAL CAUSE OF ACTION

These defendants deny Paragraph VI of plaintiff's complaint in its entirety.

VII.

INJUNCTION

These defendants deny Paragraph VII of plaintiff's complaint in its entirety.

VIII.

DAMAGES

These defendants deny Paragraph VIII of plaintiff's complaint in its entirety.

Respectfully submitted,

STEPHENSON, THOMPSON & DIES

By /s/ Martin W. Dies
MARTIN W. DIES
Attorneys for Named Defendants

712 Division St.,
Orange, Texas 77630

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Civil Action No. B-75-26-CA

PAUL E. SCOTT *et al.*

vs.

BILL MOORE *et al.*

**ORIGINAL ANSWER OF DEFENDANTS, CARPENTERS LOCAL #753—W. H. CARR**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW CARPENTERS LOCAL #753—W. H. CARR, defendants in the above entitled and numbered cause, and in answer to the plaintiff's complaint heretofore filed, would respectfully show unto the Court the following:

I.

PARTIES

(1) These defendants neither admit or deny subsection (1) of Paragraph I of plaintiff's complaint for lack of knowledge.

(2) These defendants neither admit or deny subsection (2) of Paragraph I of plaintiff's complaint for lack of knowledge.

(3) These defendants admit subsection (3) of Paragraph I of plaintiff's complaint.

II.

JURISDICTION AND VENUE

These defendants deny subsection (1) of Paragraph II of plaintiff's complaint in its entirety.

III.

CLASS ACTION

These defendants deny Paragraph III of plaintiff's complaint that it is properly brought as a class action.

IV.

BACKGROUND OF CONTROVERSY

(A) These defendants neither admit or deny subsection (A) of Paragraph IV of plaintiff's complaint for lack of knowledge.

(B) These defendants neither admit or deny subsection (B) of Paragraph IV of plaintiff's complaint for lack of knowledge.

(C) These defendants deny subsection (C) of Paragraph IV of plaintiff's complaint.

(D) These defendants deny subsection (D) of Paragraph IV of plaintiff's complaint.

(E) These defendants deny subsection (E) of Paragraph IV of plaintiff's complaint.

(F) These defendants deny subsection (F) of Paragraph IV of plaintiff's complaint.

V.

DEFENDANTS

These defendants deny Paragraph V of plaintiff's complaint in its entirety.

VI.

LEGAL CAUSE OF ACTION

These defendants deny Paragraph VI of plaintiff's complaint in its entirety.

VII.

INJUNCTION

These defendants deny Paragraph VII of plaintiff's complaint in its entirety.

## VIII.

## DAMAGES

These defendants deny Paragraph VIII of plaintiff's complaint in its entirety.

Respectfully submitted,

STEPHENSON, THOMPSON & DIES

By /s/ Martin W. Dies
MARTIN W. DIES
Attorneys for Named Defendants

712 Division St.,
Orange, Texas 77630

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Civil Action No. B-75-26-CA

PAUL E. SCOTT *et al.*,
*Plaintiffs,*

vs.

BILL MOORE *et al.*,
*Defendants.*

**MOTION TO DISMISS**

COMES NOW Sabine Area Building Trades Council, AFL-CIO, Co-Defendant in the civil action styled and captioned above, and pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, presents herewith its Motion to Dismiss, and in support thereof, would respectfully show unto the Court as follows:

I.

***The Amended Complaint, as against Sabine Area Building Trades Council, fails to allege jurisdiction of this Court over the subject matter, and within its own parameters, discloses lack of Federal jurisdiction, and must accordingly be dismissed in its entirety pursuant to Rule 12(b)(1).***

More specifically:

(1) Federal jurisdiction must be alleged,[1] established,[2] and is never assumed,[3] for Federal jurisdiction is not plenary.[4] The Amended Complaint served upon the Co-

[1] Page 1 of Memorandum of Points and Authorities.

[2] Page 2 of Memorandum of Points and Authorities.

[3] Pages 2 and 3 of Memorandum of Points and Authorities.

[4] Page 3 of Memorandum of Points and Authorities.

Defendant herein, being the *only pleading served upon this Co-Defendant, fails altogether to alleged Federal jurisdiction. For this reason alone, it must be dismissed.*[5]

(2) The Amended Complaint clearly *alleges* (*Paragraph C, Page 3*) a labor dispute, and the Amended Complaint clearly seeks an injunction (Paragraph 7, Page 6). By definition, from the phrase of the Amended Complaint, an injunction is sought against Co-Defendant Sabine Area Building Trades Council, a labor organization within the meaning of Section 2(11) of the National Labor Relations Act, as amended, 29 U.S.C. 104, expressly provides that the District Courts of the United States shall have no jurisdiction to issue such injunctions.[6] Seven exceptions to the absolute rule of the Norris-LaGuardia Act have been enacted by Congress, being Section 8(b)(4)(i)(ii)(A), Section 8(b)(4)(ii)(B), Section 8(b)(7)(A), Section 8(b)(7)(B), and Section 8(b)(7)(C), of the National Labor Relations Act, As Amended, and one exception has been judicially created by the decision of the United States Supreme Court in the case of *Boy's Markets vs. Retail Clerks Union*, 398 U.S. 235. None of these exceptions are alleged in the Amended Complaint, and concomitantly, the context of the Amended Complaint rules out the possibility of any such exception.

(3) While no duty devolves upon this Defendant to rule out other possibilities for Federal jurisdiction, the context of the Amended Complaint amply discloses that the action is not, and cannot be, brought pursuant to Section 301 of the National Labor Relations Act, as any breach of contract, or pursuant to Section 303(b) of the National Labor Relations Act, alleging a violation of Section 8(b)(4)(ii)(A,B,C or D) of the Act, and again from the caption alone it is ascertainable that no Regional Director of the National Labor Relations Board

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[5] Page 3 of Memorandum of Points and Authorities.

[6] Pages 3 and 4 or Memorandum of Points and Authorities.

is petitioning pursuant to Section 10(1)[7] of the National Labor Relations Act. Accordingly, all Federal jurisdiction peculiar to labor relations is ruled out. Since the Amended Complaint alleges a labor dispute, since an employer is among Plaintiffs, and since this Defendant is a labor organization, the express provisions of 29 U.S.C. 104 expressly apply, *a fortiari.*

(4) Federal jurisdiction cannot be maintained pursuant to 28 U.S.C. 1331 as there is no Federal question involved upon which to base jurisdiction.

(5) Federal jurisdiction cannot be maintained under either 28 U.S.C. 1343 or 42 U.S.C. 1985 (3), as the Amended Complaint fails to allege and set forth with particularity material facts showing a purposeful discrimination in the deprivation of constitutional rights, and additionally fails to allege that any such deprivation occurred under color of State Law, as required by Section 1343. Section 1085(3) has been judicially interpreted to require that the Amended Complaint allege that Defendants acted or claim to act under color of law.[8] Plaintiff's Amended Complaint makes no such allegation.

Therefore, Petitioner's Amended Complaint, as against Co-Defendants Sabine Area Building Trades Council, must be dismissed under Rule 12(b)(1) of the Federal Rules of Civil Procedure for total lack of jurisdiction.

## II.

The Complaint, as against Co-Defendant Sabine Area Building Trades Council, fails to allege that this Court has jurisdiction over the person, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure in that Co-Defendant Sabine Area Building Trades Council is

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[7] Page 4 of Memorandum of Points and Authorities.

[8] Page 4 of Memorandum of Points and Authorities.

being sued on behalf of unnamed and unknown persons without any allegation of agency being set forth in the Amended Complaint, and additionally Defendants are for the most part not even named.

III.

The Amended Complaint, as against Co-Defendant Sabine Area Building Trades Council, completely fails to make any allegations whatsoever as to venue.

IV.

The Amended Complaint, as against Co-Defendant Sabine Area Building Trades Council, should be dismissed under Rule 12(b) (4) of the Federal Rules of Civil Procedure for insufficiency of process, as numerous Defendants have not been served.

V.

The Amended Complaint, as against Co-Defendant Sabine Area Building Trades Council, should be dismissed under Rule 12(b) (5) of the Federal Rules of Civil Procedure for insufficiency of service of process, in that numerous Defendants have not been served.

VI.

The Amended Complaint, as against Co-Defendant Sabine Area Building Trades Council, should be dismissed under Rule 12(b) (6) as the Amended Complaint fails to state a cause of action upon which relief can be granted, as shown by all of the aforementioned defenses. (i.e. (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted)

The Amended Complaint fails to disclose any proper allegation or definition of a class action pursuant to Rule

23. The class action is inadequately pled and cannot be maintained as it fails to disclose the requisite elements of ascertainment, numerosity, and commonality.

Additionally, the Amended Complaint seeks to include in a class action unnamed and unknown persons who sometime in the future may happen across that particular part of property described in Plaintiff's Amended Complaint.

The Amended Complaint must be dismissed as it is pled in such a manner that it cannot be either admitted or denied, is a rambling narrative rather than a sequence of numbered allegations, and contains phrases inappropriate to Federal pleadings such as "gestapo style" action, which phrase has no place in any pleading before the United States District Court.

Plaintiff's Amended Complaint does not describe a cause of action cognizable under any Federal statute. In effect, it describes only that some violence occurred between unnamed parties, and thus, *prima facie*, jurisdiction is with state authorities.

The Defendants are not named with any specificity in Plaintiff's Amended Complaint.

To the extent that any meaning can be gleaned from this rambling narrative, the pleading is conclusionary, *en toto*.

Plaintiff's Amended Complaint fails to substantiate that they are without an adequate remedy at law, and more specifically, Plaintiffs have not exhausted their State Court remedies.

Plaintiffs Amended Complaint should be dismissed under Rule 12(b)(7) of the Federal Rules of Civil Procedure in that it fails to join Defendants who apparently are the parties who engaged in the violence alleged in the Amended Complaint.

WHEREFORE, PREMISES CONSIDERED, Co-Defendant Sabine Area Building Trades Council prays that this Complaint be dismissed in its entirety, and that Plaintiffs take nothing by way of this suit, and further, that Co-Defendant Sabine Area Building Trades Council, having been put to great legal expense and vexation, be entitled therefore to reasonable attorneys fees.

Respectfully submitted,

/s/ Wm. N. Wheat
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[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Civil Action No. B-75-26-CA

PAUL E. SCOTT, *et al.*,
*Plaintiffs,*

vs.

BILL MOORE, *et al.*,
*Defendants.*

## MOTION TO DISMISS

COMES NOW United Association of Plumbing and Pipefitting Industry, Local Union 195, Co-Defendant in the civil action styled and captioned above, and pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, presents herewith its Motion to Dismiss, and in support thereof, would respectfully show unto the Court as follows:

I.

*The Amended Complaint, as against United Association of Plumbing and Pipefitting Industry, Local Union 195, fails to allege jurisdiction of this Court over the subject matter, and within its own parameters, discloses lack of Federal jurisdiction, and must accordingly be dismissed in its entirety pursuant to Rule 12(b)(1).*

More specifically:

(1) Federal jurisdiction must be alleged,[1] established,[2] and is never assumed,[3] for Federal jurisdiction is not plenary.[4] The Amended Complaint served upon the Co-

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[1] Page 1 of Memorandum of Points and Authorities.

[2] Page 2 of Memorandum of Points and Authorities.

[3] Pages 2, 3 of Memorandum of Points and Authorities.

[4] Page 3 of Memorandum of Points and Authorities.

Defendant herein, being the *only pleading served upon this Co-Defendant, fails altogether to allege Federal jurisdiction. For this reason alone, it must be dismissed.*[5]

(2) The Amended Complaint clearly *alleges* (Paragraph C, Page 3) a labor dispute, and the Amended Complaint clearly seeks an injunction (Paragraph 7, Page 6). By definition, from the phrase of the Amended Complaint, an injunction is sought against Co-Defendant United Association of Plumbing and Pipefitting Industry, Local 195, a labor organization within the meaning of Section 2(11) of the National Labor Relations Act, as amended, 29 U.S.C. 104, expressly provides that the District Courts of the United States shall have no jurisdiction to issue such injunctions.[6] Seven exceptions to the absolute rule of the Norris-LaGuardia Act have been enacted by Congress, being Section 8(b)(4)(i)(ii)(A), Section 8(b)(4)(ii)(B), Section 8(b)(7)(A), Section 8(b)(7)(B), and Section 8(B)(7)(C), of the National Labor Relations Act, As Amended, and one exception has been judicially created by the decision of the United States Supreme Court in the case of *Boy's Markets vs. Retail Clerks Union*, 398 U.S.C. 235. None of these exceptions are alleged in the Amended Complaint, and concomitantly, the context of the Amended Complaint rules out the possibility of any such exception.

(3) While no duty devolves upon this Defendant to rule out other possibilities for Federal jurisdiction, the context of the Amended Complaint amply discloses that the action is not, and cannot be, brought pursuant to Section 301 of the National Labor Relations Act, as any breach of contract, or pursuant to Section 303(b) of the National Labor Relations Act, alleging violation of Section 8(b)(4)(i)(ii)(A,B,C, or D) of the Act, and again from the caption alone it is ascertainable that no Re-

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[5] Page 3 of Memorandum of Points and Authorities.

[6] Page 3, 4 of Memorandum of Points and Authorities.

gional Director of the National Labor Relations Board is petitioning pursuant to Section 10(I)[7] of the National Labor Relations Act. Accordingly, all Federal jurisdiction peculiar to labor relations is ruled out. Since the Amended Complaint alleges a labor dispute, since an employer is among Plaintiffs, and since this Defendant is a labor organization the express provisions of 29 U.S.C. 104 expressly apply, *a fortiari.*

(4) Federal jurisdiction cannot be maintained pursuant to 29 U.S.C. 1331 as there is no Federal question involved upon which to base jurisdiction.

(5) Federal jurisdiction cannot be maintained under either 28 U.S.C. 1343 or 42 U.S.C. 1985(3), as the Amended Complaint fails to allege and set forth with particularity material facts showing a purposeful discrimination in the deprivation of constitutional rights, and additionally fails to allege that any such deprivation occurred under color of State Law, as required by Section 1343. Section 1985(3) has been judicially interpreted to require that the Amended Complaint allege that Defendants acted or claim to act under color of law.[8] Plaintiff's Amended Complaint makes no such allegation.

Therefore, Petitioner's Amended Complaint, as against Co-Defendants United Association of Plumbing and Pipefitting Industry, Local Union 195, must be dismissed under Rule 12(b)(1) of the Federal Rules of Civil Procedure for total lack of jurisdiction.

## II.

The Amended Complaint, as against Co-Defendant United Association of Plumbing and Pipefitting Industry, Local Union 195, fails to allege that this Court has jurisdiction over the person, pursuant to Rule 12(b)(2) of

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[7] Page 4, of Memorandum of Points and Authorities.

[8] Page 4 of Memorandum of Points and Authorities.

the Federal Rules of Civil Procedure in that Co-Defendant United Association of Plumbing and Pipefitting Industry, Local Union 195 is being sued on behalf of unnamed and unknown persons without any allegation of agency being set forth in the Amended Complaint, and additionally Defendants are for the most part not even named.

III.

The Amended Complaint, as against Co-Defendant United Association of Plumbing and Pipefitting Industry, Local Union 195, completely fails to make any allegations whatsoever as to venue.

IV.

The Amended Complaint, as against Co-Defendant United Association of Plumbing and Pipefitting Industry, Local Union 195, should be dismissed under Rule 12(b)(4) of the Federal Rules of Civil Procedure for insufficiency of process, as numerous Defendants have not been served.

V.

The Amended Complaint, as against Co-Defendant United Association of Plumbing and Pipefitting Industry, Local Union 195, should be dismissed under Rule 12(b)(5) of the Federal Rules of Civil Procedure for insufficiency of service of process, in that numerous Defendants have not been served.

VI.

The Amended Complaint, as against Co-Defendant United Association of Plumbing and Pipefitting Industry, Local Union 195, should be dismissed under Rule 12(b)(6) as the Amended Complaint fails to state a cause of action upon which relief can be granted as shown by all of the aforementioned defenses. (i.e.(1)lack of jurisdiction over the subject matter, (2)lack of juris-

diction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted.)

The Amended Complaint fails to disclose any proper allegation or definition of a class action pursuant to Rule 23. The class action is inadequately pled and cannot be maintained as it fails to disclose the requisite elements of ascertainment, numerosity, and commonality.

Additionally, the Amended Complaint seeks to include in a class action unnamed and unknown persons who sometime in the future may happen across that particular part of property described in Plaintiff's Amended Complaint.

The Amended Complaint must be dismissed as it is pled in such a manner that it cannot be either admitted or denied, is a rambling narrative rather than a sequence of numbered allegations, and contains phrases inappropriate to Federal pleadings such as "gestapo style" action, which phrase has no place in any pleading before the United States District Court.

Plaintiff's Amended Complaint does not describe a cause of action cognizable under any Federal statute. In effect, it describes only that some violence occurred between unnamed parties, and thus, *prima facie*, jurisdiction is with state authorities.

The Defendants are not named with any specificity in Plaintiff's Amended Complaint.

To the extent that any meaning can be gleaned from this rambling narrative, the pleading is conclusionary, *en toto.*

Plaintiff's Amended Complaint should be dismissed under Rule 12(b)(7) of the Federal Rules of Civil Procedure in that it fails to join Defendants who apparently are the parties who engaged in the violence alleged in the Amended Complaint.

WHEREFORE, PREMISES CONSIDERED, Co-Defendant United Association of Plumbing and Pipefitting Industry, Local Union 195, prays that this Complaint be dismissed in its entirety, and that Plaintiffs take nothing by way of this suit, and further, that Co-Defendant United Association of Plumbing and Pipefitting Industry, Local Union 195, having been put to great legal expense and vexation, be entitled therefore to reasonable attorneys fees.

Respectfully submitted,

/s/ Wm. N. Wheat
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Civil Action No. B-75-26-CA

PAUL E. SCOTT *et al.*

vs.

BILL MOORE *et al.*

**MOTION TO DISMISS**

Comes now the following defendants herein, CARPENTERS LOCAL #753; CARPENTERS LOCAL #2007; CARPENTERS LOCAL #610; MILLWRIGHTS LOCAL #2484; PILEDRIVERS LOCAL #1347; IRONWORKERS LOCAL #125; SHEETMETAL WORKERS LOCAL #196; BOILERMAKERS LOCAL #587; AND PLUMBERS LOCAL #504, and make and file this their motion to dismiss, showing unto the Court as follows:

1.

These defendants adopt and incorporate herein by reference the motions to dismiss heretofore filed herein by the other defendants in this case, which are presently under consideration by the Court, and these defendants move for dismissal as to them upon the same ground and pursuant to the same authorities relied upon by the other defendants in their respective motions.

WHEREFORE, PREMISES CONSIDERED, the defendants, CARPENTERS LOCAL #753; CARPENTERS LOCAL #2007; CARPENTERS LOCAL #610; MILLWRIGHTS LOCAL #2484; PILEDRIVERS LOCAL #1347; IRONWORKERS LOCAL #125; SHEETMETAL WORKERS LOCAL #196; BOILERMAKERS LOCAL #587; and PLUMBERS LOCAL #504 move

and pray that this action be in all things dismissed as to said defendants, and these defendants recover their costs and any other relief to which they may be entitled.

Respectfully submitted,

/s/ Martin W. Dies
MARTIN W. DIES
712 Division Street
Orange, Texas 77630

[Certificate of Service Omitted in Printing]